

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

CLIFF GARDNER et al.,
Plaintiffs and Respondents,
v.
ARNOLD SCHWARZENEGGER et al.,
Defendants and Appellants.

A122920

(Alameda County
Super. Ct. No. RG06278911)
ORDER MODIFYING OPINION
[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on November 5, 2009, be modified in the following particulars:

1. On page 14, the first sentence of the second full paragraph is modified by changing the word “Defendants” to “Plaintiffs” and changing the word “plaintiffs to “defendants.” The sentence will now read:

Plaintiffs argue, and we agree, that section 9 provides in effect for a referendum because it presents the voters with a measure the Legislature has already enacted (see *Jahr v. Casebeer* (1999) 70 Cal.App.4th 1250, 1259 [an initiative allows voters to propose new legislation; a referendum permits voters to reject legislation already adopted]; Cal. Const., art. II, § 9, subd. (a) [“referendum is the power of the electors to approve or reject statutes or parts of statutes”]), and defendants do not contend that the requirements for a referendum have been satisfied (*id.*, art. II, § 9, subd. (a) [referendum power does not extend to urgency statutes]; *id.*, art. II, § 9, subd. (b) [a referendum is placed on the ballot by the voters, not the Legislature; petition from specified number of electors must be filed within 90 days of statute’s enactment]).

There is no change in the judgment.

Date: November 23, 2009

Marchiano, P.J.